

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA E. SOUTHARD and U.S. POSTAL SERVICE,
POST OFFICE, Tucson, AZ

*Docket No. 03-362; Submitted on the Record;
Issued March 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On September 30, 2000 appellant, then a 48-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained chronic pain, depression and anxiety causally related to her federal employment. By decision dated December 8, 2000, the Office denied the claim. In a decision dated July 26, 2001, an Office hearing representative affirmed the December 8, 2000 decision; the hearing representative indicated that no compensable work factors had been established.

In a letter dated July 24, 2002, appellant requested reconsideration of her claim. By decision dated September 18, 2002, the Office determined that appellant's request for reconsideration and the evidence submitted were insufficient to warrant merit review of the claim.

Appellant filed her appeal in this case on November 18, 2002. With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed her appeal on November 18, 2002, the only decision over which the Board has jurisdiction on this appeal is the September 18, 2002 decision denying the request for reconsideration without merit review of the claim.

The Board finds that the Office properly determined that the July 24, 2002 request for reconsideration did not warrant merit review of the claim.

¹ See 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁴

In the July 24, 2002 reconsideration request, appellant indicates that she disagreed with the conclusions of the hearing representative in the July 26, 2001 decision. Appellant does not show that the Office erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument.

Appellant did submit additional medical evidence after the July 26, 2001 Office decision; there is evidence that was previously submitted, as well as new medical evidence, including an April 16, 2002 report from Dr. Jon Ostrowski, a treating physician. Since the Office has not accepted that a compensable work factor has been substantiated in this case, the issue is whether appellant has submitted new and relevant evidence regarding the underlying factual issue of a compensable work factor. Although appellant does not have to submit evidence sufficient to establish a compensable work factor, it must be pertinent to the issue. The medical evidence does not address the issue of a compensable work factor.

The Board notes that appellant also submitted a July 23, 2002 statement from a coworker, Ross Phillips. According to Mr. Philips, appellant seemed stressed on some days, she had to explain to management why she was exceeding her time restrictions and management "seemed to send her to a lot of fitness-for-duty exam[ination]s." The allegations regarding the completion of her route and fitness-for-duty examinations had previously been raised by appellant. The underlying issue with respect to compensability is whether there is a compensable work factor.⁵ The brief and general statements by the witness do not constitute relevant and pertinent evidence with respect to error or abuse by the employing establishment.

The Board accordingly finds that appellant did not meet any of the requirements of section 10.606(b)(2) in this case. The Office properly denied the request for reconsideration without merit review of the claim.

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application").

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

The decision of the Office of Workers' Compensation Programs dated September 18, 2002 is affirmed.

Dated, Washington, DC
March 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member